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IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1972

No. 72-5677

CLARENCE JOHN HESSEL,

Petitioner,

vs.

THE HONORABLE STATE OF ARIZONA; ARIZONA HIGHWAY DEPARTMENT OF THE STATE OF ARIZONA; MR. DAVID H. CAMPBELL, Superintendent of the Motor Vehicle Division; MR. JOHN BEYDLER, Hearing Officer for the Motor Vehicle Division; MR. ORVILLE BOWMAN, Pick-up man for the Motor Vehicle Division; MR. CHRISTOPHER LEESE, Supervisor of the Maintenance Division; MR. JOHN AMEY, Attorney for the State of Arizona; MR. L. R. WITTER, Judge for the City of Glendale, Arizona; MR. JERRY EDWARD McCOWN, Police Lt., Glendale, Arizona,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

## OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit affirming the district court's order dismissing petitioner's complaint is reported at 465 F.2d 958 and also appears in the Appendix in this cause. (1a)

## JURISDICTION

Respondents, State of Arizona; Arizona Highway Department; David H. Campbell, Superintendent of the Motor Vehicle Division, Arizona Highway Department; John Beydler, Hearing Officer for the Motor Vehicle Division, Arizona Highway Department; Orville Bowman, Employee of the Motor Vehicle Division, Arizona Highway Department; Christopher Leese, Supervisor of Building Maintenance of the Arizona Highway Department; and John Amey, Assistant Attorney General and Chief Counsel of the Arizona Highway Department, submit that petitioner has failed to comply with any of the requirements of 28 U.S.C.A., Supreme Court Rules, Rule 23, subsections 1 (b), (biii), (c), (d), (e), (g) & (h). He has failed to include in his petition:

> "1. (b) A concise statement of the grounds on which the jurisdiction of this court is invoked, showing:
>
> * * *
>
> (iii) The statutory provision believed to confer on this court jurisdiction to review the judgment or decree

in question by writ of certiorari.

(c) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. Only the questions set forth in the petition or fairly comprised therein will be considered by the court.

(d) The constitutional provisions, treaties, statutes, ordinances, or regulations which the case involves, setting them out verbatim, and citing the volume and page where they may be found in the official edition. If the provisions involved are lengthy, their citation alone will suffice at this point, and their pertinent text shall be set forth in an appendix.

(e) A concise statement of the case containing the facts material to the consideration of the questions presented.

* * *

(g) If review of the judgment of a federal court is sought, the statement of the case shall also show the basis for federal jurisdiction in the court of first instance.

(h) A direct and concise argument amplifying the reasons relied on for the allowance of the writ."

Respondents are, therefore, unable to determine on what constitutional or statutory basis petitioner is relying to invoke this court's jurisdiction. Subsection 4 of Rule 23, supra, provides:

"The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

It is submitted, therefore, that this court's jurisdiction need not and should not be exercised.

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The State statute challenged by petitioner is A.R.S. § 28-1142 A and B:

"A. The superintendent shall, within sixty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death or damage to the property of any one person in excess of one hundred dollars, suspend the license of each operator and all registrations of each owner

of a motor vehicle in any manner involved in such accident, or, if the operator is a non-resident, the privilege of operating a motor vehicle within this state, or, if the owner is a non-resident, the privilege of the use within this state of any motor vehicle owned by him, unless such operator or owner or both shall deposit security in a sum which is sufficient in the judgment of the superintendent to satisfy any judgment or judgments for damages resulting from the accident as may be recovered against the operator or owner. Notice of the suspension shall be sent by the superintendent to the operator and owner not less than ten days prior to the effective date of the suspension and shall state the amount required as security.

B. This section shall not apply under the conditions stated in § 28-1143 or to any of the following:

1. To the operator or owner if the owner had in effect at the time of the accident an automobile liability policy with respect to the motor vehicle involved in the accident.

2. To the operator, if not the owner of the motor vehicle, if there

was in effect at the time of the accident an automobile liability policy or bond with respect to his operation of motor vehicles not owned by him.

3. To the operator or owner if the liability of the operator or owner for damages resulting from the accident is, in the judgment of the superintendent, covered by any other form of liability insurance policy or bond.

4. To any person qualifying as a self-insurer under § 28-1222."

and A.R.S. § 28-1122 (A & B):

"A. The superintendent shall administer and enforce the provisions of this chapter and may make rules and regulations necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the superintendent under the provisions of article 3 of this chapter.

B. Persons aggrieved by an order or act of the superintendent under the provisions of article 3 of this chapter, may, within ten days after notice thereof, file a petition in the superior court of the county

in which the person resides for a trial de novo to determine whether the order or act is lawful and reasonable. The filing of a petition shall not suspend the order or act of the superintendent unless a stay thereof shall be allowed by a judge of the court pending final determination of the matter. The court shall summarily hear the petition and may make any appropriate order or decree."

## QUESTION PRESENTED FOR REVIEW

Because petitioner has not complied with Rule 23(c), supra, respondents are unable to determine what is being presented for review. The closest thing to a question is petitioner's statement in his motion:

". . . the honorable judges who ruled upon this matter at the Court of Appeals level failed to consider the Constitutional questions involved in this matter."

Respondents do not agree with that statement and submit there are no questions presented for review.

## STATEMENT OF THE CASE

Petitioner was involved in an automobile accident on October 4, 1969. In the accident

report to the State, he claimed insurance coverage which was subsequently denied. Pursuant to A.R.S. Section 28-1142, on December 2, 1969, the Superintendent of the Motor Vehicle Division of the Arizona Highway Department ordered the suspension of the petitioner's driver's license and motor vehicle registration. Petitioner requested and was given an administrative hearing on December 11, 1969, in which it was determined that there was a reasonable probability of a judgment being rendered against him. No appeal from this determination was taken to the Superior Court of the State of Arizona as permitted under A.R.S. Section 28-1122(B). On August 4, 1970, petitioner was tried in the City Court of the City of Glendale for willfully failing to return driver's license and auto registration. Petitioner was found guilty, sentenced by respondent The Honorable L. R. Witter, Judge of the City Court of Glendale, Arizona, and committed to County Jail, Phoenix, Arizona. When booked into County Jail, respondent McCown, Police Lieutenant, City of Glendale, turned over petitioner's driver's license to a representative of the Superintendent of the Motor Vehicle Division of the Arizona Highway Department. On December 10, 1970, petitioner's registration and driver's license were returned to him upon his filing an affidavit of non-suit, a dismissal of the lawsuit previously filed against him and a certificate of insurance as required by A.R.S. § 28-1144. Petitioner has at all times since then been able to operate a motor vehicle upon the roadways of Arizona.

On January 19, 1971, this action was filed in the Federal District Court for the District of Arizona. On March 22, 1971, it was dismissed on respondents' motion for failure to state a claim upon which relief could be granted. An appeal was subsequently taken to the Ninth Circuit Court of Appeals. An opinion was rendered on August 9, 1972 by the Court of Appeals affirming the lower court's dismissal.

## ARGUMENT

The Court of Appeals considered all issues presented on appeal and correctly upheld the constitutionality of A.R.S. § 28-1142 A and B. There is nothing for this court to consider on a writ of certiorari.

As is provided in 28 U.S.C.A., Supreme Court Rules, Rule 19 (1. b):

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> * * *
>
> (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of

> appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

Petitioner has not shown that any of these reasons for review on a writ of certiorari exist, and indeed they do not.

A brief perusal of the Court of Appeals decision shows that the court considered all questions presented for review and in a well reasoned opinion decided them adversely to petitioner.

The nearest thing that can be gleaned from petitioner's writ as remotely resembling a question is when petitioner claims the Court of Appeals did not consider the constitutional questions involved in the matter. This is simply not true. See Hessel v. State of Arizona, 465 F.2d 958, at page 959, where the court said:

"Mr. Hessel has interwoven his attacks upon his misdemeanor conviction, on the constitutionality of the Financial Responsibility Act, and on the administrative proceedings that resulted in the suspension order. Because he failed to exhaust his available remedies in the state courts, he could not collaterally attack either his misdemeanor conviction or his administrative proceeding in the federal courts, . . ." (App. p 2a)

And also:

"The focal point of his complaint is the challenge to the constitutional validity of Arizona's Financial Responsibility Act. The Act has withstood constitutional attack in Schechter v. Killingsworth (1963) 93 Ariz. 273, 380 P. 2d 136. The Act does not have the constitutional infirmity for which the Supreme Court struck down Georgia's Motor Vehicle Safety Responsibility Act in Bell v. Burson (1971) 402 U.S. 535, 91 S.Ct. 1586, 29 L. Ed. 2d 90. We are not persuaded in this case to disturb Schechter. The efforts to attack the Act on grounds other than those discussed in Bell and Schechter do not have sufficient legal merit to warrant discussion." (App. p 2a)

There simply is no showing that the decision in Hessel, supra, is (1) in conflict with the decision of another court of appeals; (2) has decided an important state question in a way in conflict with applicable state law; (3) has decided an important question of federal law which has not been, but should be settled by this court; (4) has decided a federal question in a way in conflict with applicable decisions of this court; (5) or has so far departed or sanctioned a departure from accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

Petitioner, as can be seen from the statement of facts, did not avail himself of his judicial remedies after the administrative hearing. The Arizona Supreme Court has held in Schecter v. Killingsworth, 93 Ariz. 273, 380 P.2d 136 (1963) that a hearing must be provided prior to the suspension of an individual's license. See Schecter, supra, at page 282 where the court said:

> ". . . this Court believes it is implied in this statute that, when requested, an aggrieved person shall have an administrative hearing before the suspension order becomes effective."

And at 283:

> ". . . we hold that the administrative hearing provided by A.R.S. Section 28-1122, subd. A must, if requested, be conducted

prior to the effective date of an order of suspension under the act."

Petitioner did have the administrative hearing provided prior to the effective date of his license suspension. And as pointed out by the court in Schecter, supra, at page 284, the scope of the hearing is limited:

". . . the superintendent need not decide on the basis of conflicting evidence whether a motorist was in fact, culpable, but must determine if there is any reasonable possibility that a judgment will be recovered against him and the amount thereof. . . ."

After petitioner was afforded the hearing contemplated by Schecter, supra, he did not avail himself of the appeal to Superior Court provided by A.R.S. § 28-1122 (B), supra.

Clearly the hearing afforded petitioner, as described in Schecter, supra, falls squarely within what was contemplated by Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971) at page 542:

". . . due process requires that when a State seeks to terminate an interest such as that here involved, it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective." (Emphasis theirs)

And at 540:

> ". . . we hold that procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amounts claimed being rendered against the licensee."

Finally as can be seen from the statement of facts, the issues raised by petitioner were moot since prior to the time his action was filed his driving privileges had been restored.

This court has struck down a portion of the Arizona Financial Responsibility Act in Perez v. Campbell, 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971). Specifically this held that A.R.S. § 28-1163 (B) was rendered invalid by the Supremacy Clause. A brief perusal of that decision reveals that it was limited in scope to that one section of the Financial Responsibility Act and did not affect the remainder. See Perez, supra, page 643, note 10.

## CONCLUSION

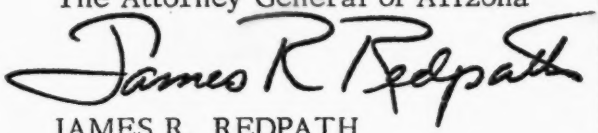
As the court indicated in Hessel, supra, after considering all of the questions raised by petitioner, they had sympathy for petitioner and the misfortunes which befell him but correctly concluded there simply was nothing which could be redressed by the action he brought in federal court.

Petitioner has not shown by his pleadings any good reason why this court should grant

certiorari and reconsider the Court of Appeals decision. It is submitted that in fact there is none.

These respondents would, therefore, request that petitioner's request for a writ of certiorari be denied.

GARY K. NELSON
The Attorney General of Arizona



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APPENDIX

ORNEY GENERAL
TE OF ARIZONA

# UNITED STATES COURT OF APPEALS
## FOR THE NINTH CIRCUIT

CLARENCE JOHN HESSEL,
*Plaintiff-Appellant,*

vs.

STATE OF ARIZONA, et al.,
*Defendants-Appellees.*

No. 71-1721

[August 9, 1972] DOCKET #W4

Appeal from the United States District Court
for the District of Arizona

Before: BARNES and HUFSTEDLER, Circuit Judges, and SCHNACKE,* District Judge

PER CURIAM:

Mr. Hessel's unhappy plight began when he transferred his automobile insurance from one carrier to another, and he was involved in an accident for which both carriers denied coverage. Pursuant to Arizona's Financial Responsibility Act (Ariz. Rev. Stat. § 28-1142A and B), the Superintendent of the Motor Vehicle Division of the Arizona Highway Department ordered suspension of Mr. Hessel's driver's license and of his motor vehicle registration. He was given an administrative hearing on December 22, 1969, in which the suspension order was upheld upon the determination that there was a reasonable probability that judgment would be rendered against him. Although an appeal to superior court of the State of Arizona from the administrative decision was authorized (Ariz. Rev. Stat. § 28-1122B), he did not appeal. His efforts to use self-help to retain his license plates resulted in a misdemeanor conviction. He lost his job and was unable to retain private counsel to help him. Subsequently he was exonerated from civil liability for the accident. On December 10, 1970,

*Honorable Robert H. Schnacke, United States Judge for the Northern District of California, sitting by designation.

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he filed an affidavit reporting the dismissal of the civil action and a certificate of insurance as provided by Ariz. Rev. Stat. § 28-1144, and his driving privileges were restored.

He filed this action in propria persona against the State of Arizona and against a series of Arizona officials seeking damages to redress his grievances that followed the suspension order. The district court dismissed his case for failure to state a claim upon which relief can be granted.

Mr. Hessel has interwoven his attacks upon his misdemeanor conviction, on the constitutionality of the Financial Responsibility Act, and on the administrative proceedings that resulted in the suspension order. Because he failed to exhaust his available remedies in the state courts, he could not collaterally attack either his misdemeanor conviction or his administrative proceeding in the federal courts, even if we assumed, *arguendo*, that his complaint could be construed to state some claim in the nature of habeas corpus.[1]

The focal point of his complaint is the challenge to the constitutional validity of Arizona's Financial Responsibility Act. The Act has withstood constitutional attack in *Schechter v. Killingsworth* (1963) 93 Ariz. 273, 380 P.2d 136. The Act does not have the constitutional infirmity for which the Supreme Court struck down Georgia's Motor Vehicle Safety Responsibility Act in *Bell v. Burson* (1971) 402 U.S. 535. We are not persuaded in this case to disturb *Schechter*. The efforts to attack the Act on grounds other than those discussed in *Bell* and *Schechter* do not have sufficient legal merit to warrant discussion.

Although we have sympathy for Mr. Hessel in the misfortunes that befell him, we agree with the district court that none of them can be redressed by the action he brought in the federal court.

The judgment is AFFIRMED.

---

[1]Mr. Hessel has not undertaken postconviction relief in Arizona; hence, Arizona has not had an opportunity to determine the effect, if any, of *Argersinger v. Hamlin* (1972) ..... U.S. ..... [40 U.S.L.W. 4679] upon the misdemeanor conviction.

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AFFIDAVIT OF SERVICE

STATE OF ARIZONA )
) ss.
County of Maricopa )

JAMES R. REDPATH, counsel for Respondents, State of Arizona, et al, herein, certifies that three (3) copies of the foregoing Brief, in its entirety, was served upon Petitioner and Counsel for Respondents Witter and McCown in the following manner:

By certified mail, postage prepaid, return receipt requested, to:

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on the 28th day of December, 1972.

James R Redpath

JAMES R. REDPATH
Assistant Attorney General

SUBSCRIBED AND SWORN to before me this 28th day of December, 1972.

Charlene K. Hansen

Notary Public

My Commission Expires:

July 15, 1974